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In re Application of
HAGA, Hideo *et al*
U.S. Application No.: 09/980,535
PCT No.: PCT/JP01/01367
Int. Filing Date: 23 February 2001
Priority Date: 25 February 2000
Attorney's Docket No.: 34108
For: CARD HOLDING STRUCTURE AND
PORTABLE TERMINAL APPARATUS
HAVING THE SAME

DECISION

This is a decision on the "Letter" filed on 31 May 2002 which has been treated as a petition to reset a time period and the declaration and postcard receipt submitted via facsimile on 18 July 2002 which have been treated as a petition under 37 CFR 1.181. There is no charge for either petition.

BACKGROUND

On 25 January 2002, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements under 35 U.S.C. 371 indicating *inter alia* that an oath/declaration in compliance with 37 CFR 1.497(a) and (b) was required. A two-month time limit in which to respond was set.

On 13 May 2002, applicants purportedly mailed an executed declaration.

On 31 May 2002, applicants submitted the instant petition which was accompanied by, *inter alia*, a copy of the Notification of Missing Requirements stamped as received on 09 May 2002.

On 18 July 2002, applicants submitted via facsimile a copy of the declaration previously submitted on 13 May 2002 and a copy of the date-stamped postcard receipt.

DISCUSSION

Declaration Submitted 13 May 2002

A review of the above-captioned application file reveals that the declaration filed 13 May 2002 was located in the file. Therefore, no action is required on the papers filed 18 July 2002.

Petition to Reset Time

Section 710.06 of the Manual of Patent Examining Procedures (MPEP) states that the Office will grant a petition to restart the previously set period for reply to an Office action to run from the date of receipt of the Office action at the correspondence address when the following criteria are met:

- (A) the petition is filed within two weeks of the date of receipt of the Office action at the correspondence address;
- (B) a substantial portion of the set reply period had elapsed on the date of receipt (e.g., at least 1 month of a 2- or 3-month reply period had elapsed); and
- (C) the petition includes (1) evidence showing the date of receipt of the Office action at the correspondence address (e.g., a copy of the Office action having the date of receipt of the Office action at the correspondence address stamped thereon, a copy of the envelope (which contained the Office action) having the date of receipt of the Office action at the correspondence address stamped thereon, etc.), and (2) a statement setting forth the date of receipt of the Office action at the correspondence address **and explaining how the evidence being presented establishes the date of receipt of the Office action at the correspondence address.** (Emphasis added).

Applicants claim that the Notification of Missing Requirements mailed 25 January 2002 was not received until 09 May 2002. The instant petition was deposited pursuant to 37 CFR 1.8(a) on 14 May 2002. Thus, item (A) is satisfied.

Item (B) is also satisfied since the two-month period to reply to the Notification of Missing Requirements mailed 25 January 2002 had long expired on 09 May 2002.

Concerning item (C), applicants submitted a copy of the aforementioned Notification of Missing Requirements which is stamped on its face as "RECEIVED MAY 09 2002 PEARNE & GORDON LLP." In the letter, counsel states "that the Notification of Missing Requirements was not received until May 9, 2002."

However, applicants have not met the requirements for a grantable petition. Applicants have not satisfactorily explained how mail is received and docketed in the law firm and why the stamped copy of the Notification of Missing Requirements alone establishes the date of receipt of the Office action at counsel's law firm.

Therefore, item (C) above is not yet satisfied.

Accordingly, applicants have not met all of the requirements to restart the time period on the Notification of Missing Requirements mailed 25 January 2002.

CONCLUSION

For the reasons discussed above, applicants' petition to restart the time period is **DISMISSED** without prejudice. In addition, applicants petition under 37 CFR 1.181 is also **DISMISSED** as **MOOT**.


The statutory period that was originally set forth in the Office communication mailed on 25 January 2002 is still operative. A two-month extension fee of \$200.00 will be charged to Deposit Account No. 16-0820 as authorized. The \$130.00 petition fee will be credited to the same Deposit Account.

If reconsideration on the merits of the petition to restart the time period is desired, a renewed petition must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition to Restart Time Period."

The declaration submitted 13 May 2002 is in compliance with 37 CFR 1.497.

Applicants have completed the requirements for acceptance under 35 U.S.C. 371(c). The application has an international filing date of 23 February 2001, under 35 U.S.C. 363, and a 35 U.S.C. 371 date of **13 May 2002**.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing. Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.


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